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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 454

SALVATORE TERRITO, CHARLES TERRITO, and VINCENT TERRITO
A Partnership, Trading as Territo & Sons
and
CALTER PETROLEUM CO., INC., A Corporation,
Appellants,

v.

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION,
Appellees.

APPEAL FROM FINAL ORDER OF THREE JUDGE STATUTORY COURT OF THE UNITED STATES DISTRICT CÓURT FOR THE DISTRICT COURT OF NEW JERSEY

SUPPLEMENT TO BRIEF IN OPPOSITION TO MOTION TO AFFIRM

Appellants, through their attorney, respectfully submit this Supplement to Brief in Opposition To Motion To Affirm for the purpose of adding the following amendment to Rule 1.74 of the General Rules of Practice Before The Commission which amendment became effective May 8, 1958; said Rule 1.74 having been incorrectly quoted on page 6 of the Brief referred to above.

The amendment of May 8, 1958, changed the period at the end of the second sentence to a semi-colon, and added the following:

> and except, further, that parties other than the respondent shall open and close in investigations in which the burden of proof is not upon the respondent.

Rule 1.74, including the amendment of May 8, 1958, now reads as follows:

> "Witnesses will be orally examined under oath before the officer unless their testimony is taken by deposition or the facts are presented to the Commission in the manner provided under modified or shortened procedure. In formal-complaint, application, and investigation proceedings complainant, applicant, and respondent, respectively, shall open and close at the hearing, except at further hearings granted on petition the petitioner requesting further hearing shall open and close; and except, further, that parties other than the respondent shall open and close in investigations in which the burden of proof is not upon the respondent. Interveners shall follow the party in whose behalf the intervention is made. The foregoing order of presentation may be varied by the officer, who also shall designate the order of presentation in any other type of proceeding, of any other party to any proceeding, or of parties to several proceedings being heard upon a consolidated record."

The omission of the amendment of May 8, 1958, to Rule 1.74 as quoted on page 6 of appellants' brief was brought to the attention of the undersigned attorney by the Associate General Counsel of the Interstate Commerce Commission and was not an intentional omission as the undersigned attorney had no knowledge of the amendment until it was brought to his attention after the brief had been filed.

It is represented that the addition of the amendment, at this time, will not affect the argument in the brief because the

rule, as amended, does not, per se, preclude the Bureau of Inquiry and Compliance of the Commission from calling one or more of the respondents or a representative of respondents as a witness or witnesses in the presentation of its direct case.

It is respectfully requested that this supplement be accepted in order that the complete text of Rule 1.74 of the General Rules of Practice Before The Commission may be before this Court at the time of its deliberation on the motion to Affirm and on the Brief In Opposition to Motion to Affirm.

Respectfully submitted,

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